IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4207 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD IQBAL MOHMAD ISLAM ANSARI SON OF DETENU

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 25/01/2000

ORAL JUDGEMENT

#. Heard Mr.R.S.Sanjanwala, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 30-4-1999 passed by

respondent No. 2 - The Police Commissioner, Surat against the detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by the father of the detenu - Shri Babu Khambhati alias Mohmad Ismail Abdul Hakim Ansari, by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that two criminal cases were registered against the detenu vide registration No : C.R. No : 30, 66/99 and C.R.No : 30/139 / 98 at Chawk Bazaar police station on 27-1-99 and 9-3-1999 respectively for the offence made punishable under the provisions of Immoral Traffic (Prevention) 1956. It is also indicated that in 1st case registered against the detenu, in which, the detenu was arrested and was released on conditional bail. That on account of breach of condition, a report has been made on 19-4-1999 for cancellation of bail. that in second case, he has been released on bail. The grounds of detention further indicates that two witnesses on assurance of their anonymity have given statement on 26-3-1999 in respect to his illegal activities of the detenu, wherein, alleged incidents dated 26-3-1999 and 28-2-1999 respectively have been referred to. That in consideration of above stated material, the respondent No.2 as the detaining authority has come to the conclusion that the detenu is an offender in illegal traffic activities within the meaning of Section 2(g) of PASA. That enforcement of general provisions of law being insufficient to prevent the detenu from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind inasmuch as the last offence was registered against the detenu on 9-3-1999 which is made basis of the order while the impugned order is passed on 30-4-1999. That there is no explanation for such delay and as such, the subjective satisfaction having been vitiated, the order is bad in law.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of

the detention order and the same cannot be sustained in law. It is further held that unexplained inordinate delay in taking impugned action of passing the detention order cannot be sustained because the casual connection with the alleged anti social activities and the action taken being snapped, the order could be said to have been passed without application of mind. That this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonably explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, the grounds of detention does not disclose any explanation as to why action has been delayed till 30th April, 1999 though the offence against the detenu was registered at 20-3-1999 which has been made basis of the order.

#. Non application of mind on the part of the detaining authority is also apparent from the facts stated in the grounds of detention. That on 19-4-1999, the report has been made in the Court for cancellation of bail of the detenu on account of the breach of one of the conditions imposed while granting the bail. That the detaining authority has failed to disclose why such delay has been caused if conditions has been breached on 1st March, 1999. Furthermore, the detaining authority has failed to consider the aspect of claiming of cancellation of bail under Section 437(5) of CrPC though available.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In view of above stated facts and circumstances, the impugned order of detention dated 30-4-1999 passed by the respondent No.2 aginst the detenu cannot be sustained and deserves to be quashed and set aside.

##. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the

other contentions raised in the petition.

##. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 30-4-1999 passed by respondent No. 2 - The Police Commissioner, Surat against the detenu is hereby quashed and set aside. The detenu - Shri Babu Khambhati alias Mohmad Ismail Abdul Hakim Ansari is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 25-1-2000 [A.K.Trivedi, J.]

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